

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
NATIONAL UNION FIRE INSURANCE COMPANY :
OF PITTSBURGH, PA, as subrogee and assignee of :
THE ROCKEFELLER FOUNDATION, :
:

Plaintiff, :

- against - :

CHERYL McEWAN, ANTHONY McEWAN, :
FRANK MELLI, PAUL SHUSTERMAN, LISA BAKER :
and LACHO TERRAZAS, :

Defendants. :
:
-----X

Index No.: 07 CIV 7515

**Request to Certify
Default of Defendant
Anthony McEwan**

TO: THE CLERK OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK:

Please enter the default of the Defendant, Anthony McEwan, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, and Rule 55.1 of the Civil Rules for the Southern District of New York for said Defendant's failure to answer, move or otherwise defend this action. The February 13, 2008, affidavit of Brian W. Keatts in support of Plaintiff's request to enter the default (together with the Summons, Complaint and Proof of Service and other exhibits thereto), as well as a proposed Clerk's Certificate of Default are filed herewith.

Dated: New York, New York
February 13, 2008

Respectfully Submitted,

McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

By 

Richard S. Mills (RM 0206)

Brian W. Keatts (BK2000)

Attorneys for Plaintiff

88 Pine Street, 24th Floor

New York, NY 10005

(212) 483-9490

TO: Anthony McEwan
Defendant
Weston Community TLC
2262 Adam Clayton Powell Jr. Blvd, Apt. 5H
New York, NY 10030
Via Certified Mail

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Clerk's Certificate

I, J. MICHAEL McMAHON, Clerk of the United States District Court for the Southern District of New York, do hereby certify that this action commenced on August 24, 2007 with the filing of a summons and complaint, a copy of the summons and complaint was served on Defendant Anthony McEwan by personal service on September 5, 2007, and proof of such service thereof was filed on September 13, 2007.

I further certify that the docket entries indicate that Defendant Anthony McEwan has not filed an answer or otherwise moved with respect to the complaint herein. The default of the defendant is hereby noted.

Dated: New York, New York

J. MICHAEL McMAHON
Clerk of the Court

By: _____
Deputy Clerk

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Statement Of Damages

Principal amount sued for	\$421,000
Interest at 9% from 2005 through 2008	\$113,670
<u>Cost and Disbursements:</u>	
Clerk's fee	\$350.00
Process Server fee for service	\$272.75
Statutory fee	\$0
Total (as of 02/13/08)	\$535,292.75
<u>Credits:</u>	
Value of Settlements With Other Defendants	\$132,000
TOTAL (as of 02/13/08)	\$403,292.75

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL UNION FIRE INSURANCE COMPANY
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THE ROCKEFELLER FOUNDATION,

Plaintiff,

- against -

CHERYL McEWAN, ANTHONY McEWAN,
FRANK MELLI, PAUL SHUSTERMAN, LISA BAKER
and LACHO TERRAZAS,

Defendants.

Index No.: 07 CIV 7515

**Affidavit For Judgment
By Default Against
Defendant Anthony McEwan**

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Brian W. Keatts, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and associated with the law firm of McElroy, Deutsch, Mulvaney & Carpenter, LLP, attorneys for plaintiff in this action and I am familiar with all the facts and circumstances set forth herein.

2. I make this affidavit pursuant to Rule 55.1 and 55.2(a) of the Civil Rules for the Southern District of New York, in support of plaintiff's application for the entry of a default judgment against defendant Anthony McEwan (hereinafter "Mr. McEwan").

3. This action arises out of a conspiracy to defraud The Rockefeller Foundation ("Rockefeller") and is brought pursuant to the Racketeer Influenced and Corrupt Organizations Act of 1970, 18 U.S.C.A. §§ 1961 *et seq.*, (hereinafter "RICO"). The plaintiff, a subrogated

insurer assigned to the rights of its insured, Rockefeller, seeks to recover four hundred and twenty one thousand dollars (\$421,000.00), plus interest, stolen by defendants from Rockefeller.

4. The Defendants perpetrated this fraud by concocting a scheme (hereinafter referred to as the "Fraudulent Scheme") designed to take advantage of Rockefeller's gift matching program (hereinafter referred to as the "Program"). Under the Program, Rockefeller matches (on a 3 to 1 basis) donations made by its employees to 501(c)(3) non-profit charities, up to a maximum of \$30,000.

5. From 1998 – 2004, Defendant Cheryl McEwan (a former employee of Rockefeller) made purported donations to a charity known as Green Sphere pursuant to the terms of the Program. Defendant Frank Melli ("Melli") was the Executive Director and Co-Founder of Green Sphere. Upon receiving donations from Mrs. McEwan, Melli would cash the checks and submit the matching gift application to Rockefeller with proof that Green Sphere was a 501(c)(3) charity. After receiving the matching funds from Rockefeller, Melli would reimburse Mrs. McEwan for her donation and also provide her with a kick back. Some of that money was channeled through an account controlled by Mr. McEwan. From 1998 – 2004, Mrs. McEwan, Mr. McEwan and Melli utilized this aspect of the Fraudulent Scheme to steal \$188,500 from Rockefeller.

6.. In 2002, the defendants' Fraudulent Scheme was expanded to include purported donations to Urban Alternative. Urban Alternative was an organization controlled by Mr. McEwan. The donations made by Mrs. McEwan to Urban Alternative were never deposited in Urban Alternative's account. Defendants Lisa Baker ("Baker") and Lacho Terrazas ("Terrazas") returned matching gift applications on behalf of Urban Alternative to Rockefeller. The matching checks from Rockefeller were deposited in Urban Alternative's account, and then transferred

into Mr. McEwan's personal account. In December of 2004, defendant Paul Shusterman ("Shusterman") (also a former employee of Rockefeller) made a charitable contribution of \$9,000 to a purported charity known as Urban Alternative. Mrs. McEwan advanced Shusterman \$9,000 for the contribution from her personal account in order to allow him to make the donation. From 2002 – 2005, Ms. McEwan, Mr. McEwan, Shusterman, Baker and Terrazas utilized this aspect of the Fraudulent Scheme to steal \$232,500 from Rockefeller.

7. Rockefeller uncovered the defendants' Fraudulent Scheme in 2005, after denying a matching \$21,000 contribution made by Mrs. McEwan to Green Sphere. An investigation by the New York City District Attorney's office revealed that none of the funds donated by Rockefeller were utilized for charitable purposes. Instead, the money was used by the defendants for their own personal expenses (i.e. mortgage payments, credit card payments, etc.).

8. The Fraudulent Scheme was designed and carried out by the defendants for the singular purpose of stealing money from Rockefeller. Upon discovery of the fraud by Rockefeller, Mrs. McEwan was tried, convicted and sentenced to 3½ - 10½ years in prison for her role in the Fraudulent Scheme. Mr. McEwan was indicted, pleaded guilty to grand larceny and was sentenced to 2 – 6 years in prison. Melli was indicted, pleaded guilty to falsifying business records and was sentenced to unsupervised probation.

9. The defendants acted in concert to advance the Fraudulent Scheme for the purpose only of lining their own pockets with the ill-gotten gains.

10. This action was commenced on August 24, 2007 by the filing of the summons and complaint. A copy of the summons is annexed hereto as Exhibit "A". A copy of the complaint is annexed hereto as Exhibit "B". The summons and complaint were served on defendant Anthony McEwan by personal service on September 5, 2007. Proof of service upon defendant Anthony

McEwan by personal service was filed on September 13, 2007, and a copy of the said proof of service, as filed, is annexed hereto as Exhibit "C".

11. Mr. McEwan's answer to the complaint was due on September 25, 2007. He did not answer the complaint, nor did said defendant request an extension of his time to do so, nor did said defendant otherwise appear or defend the action, and the time for said defendant to answer the complaint has expired.

12. Pursuant to a Pretrial Conference Order dated November 30, 2007, the plaintiff was permitted to file an amended complaint. A copy of the Pretrial Conference Order is annexed hereto as Exhibit "D". Mr. McEwan failed to appear at the Pretrial Conference.

13. The plaintiff filed a summons and amended complaint on December 18, 2007. A copy of the summons is annexed hereto as Exhibit "E". A copy of the amended complaint is annexed hereto as Exhibit "F". The summons and amended complaint were served on defendant Anthony McEwan by overnight mail on December 18, 2007. A copy of proof of service via overnight mail, along with the correspondence accompanying the amended complaint, is annexed hereto as Exhibit "G".

14. Defendant Anthony McEwan has not answered the amended complaint, nor has said defendant requested an extension of his time so to do, nor has said defendant otherwise appeared or defended the action, and the time for the defendant to answer the amended complaint has expired.

15. A settlement conference was held before Magistrate Judge Andrew Peck on January 22, 2008. Mr. McEwan failed to appear at the conference. Accordingly, Magistrate Judge Peck issued an order directing, in part, the plaintiff to move for a default judgment against

all defendants that remained in the action after certain settlements were reached. A copy of that Order is annexed hereto as Exhibit "H". The plaintiff herein timely complies with that Order.

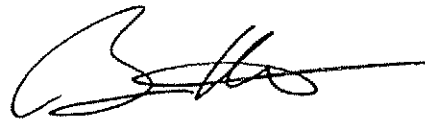
16. This action seeks judgment for the liquidated amount of four hundred and twenty one thousand dollars (\$421,000.00), plus interest at 9% from 2005, for a total as of February 13, 2008 of \$534,670, as shown by the annexed Statement, which is justly due and owing, and no part of which has been paid except as therein set forth.

17. The disbursements sought to be taxed have been made in this action or will necessarily be made herein.

18. Defendant Anthony McEwan is not an infant, is not mentally incompetent and is not in the military service of the United States

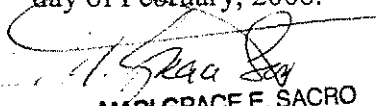
WHEREFORE, Plaintiff requests the entry of Default and the entry of the annexed Judgment against defendant Anthony McEwan.

Dated: New York, New York
February 13, 2008



Brian W. Keatts (BK 2000)

Sworn to before me this
13th day of February, 2008.



MARI GRACE E. SACRO
Notary Public, State of New York
No. 02SA6078614
Qualified in New York County
My Commission Expires 8/5/2010